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Attorney for Plaintiff
RICHARD REED and DONNA REED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO / OAKLAND DIVISION

RICHARD REED, an individual, and
DONNA REED, an individual;

Case No.

Plaintiffs,

COMPLAINT

v.

DEMAND FOR JURY TRIAL

A.S.A.P. COLLECTION SERVICES,
LLC, a California Limited Liability
Company; KELSTIN GROUP, INC., a
California Corporation, dba Credit
Bureau Associates; TERRY A.
DUREE, INC., a California
corporation; TERRY A. DUREE, an
individual; and DOES 1 through 10,
inclusive,

15 United States Code § 1692 *et seq.*
California Civil Code § 1788 *et seq.*

Defendants.

Plaintiffs RICHARD REED and DONNA REED, based on information and
belief and investigation of counsel, except for those allegations which pertain to the
named plaintiffs or their attorneys (which are alleged on personal knowledge),
hereby make the following allegations:

INTRODUCTION

1. This is an action for actual damages, statutory damages, attorney fees, and
costs of suit brought by individual consumers for Defendants' violations of the Fair

1 Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (FDCPA), which prohibits
2 debt collectors from engaging in abusive, deceptive and unfair practices.

3 2. The United States Congress has found abundant evidence of the use of
4 abusive, deceptive, and unfair debt collection practices by many debt collectors,
5 and has determined that abusive debt collection practices contribute to the number
6 of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions
7 of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15
8 U.S.C. § 1692 *et seq.* (hereinafter “FDCPA”), to eliminate abusive debt collection
9 practices by debt collectors, to insure that those debt collectors who refrain from
10 using abusive debt collection practices are not competitively disadvantaged, and to
11 promote consistent State action to protect consumers against debt collection
12 abuses.

13 JURISDICTION

14 3. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. §
15 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28
16 U.S.C. § 1367. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and
17 2202.

18 4. This action arises out of Defendants’ violations of the Fair Debt Collection
19 Practices Act, 15 U.S.C. § 1692 *et seq.* (FDCPA). This court is expressly authorized
20 to hear this case by an Act of Congress which created a specific and uniquely
21 federal right or remedy.

22 VENUE

23 5. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b), in
24 that a substantial part of the events or omissions giving rise to the claim occurred
25 in this judicial district. Venue is also proper in this judicial district pursuant to 15
26 U.S.C. § 1692k(d), in that Defendants transact business in this judicial district and
27 the violations of the FDCPA complained of occurred in this judicial district.

28 INTRADISTRICT ASSIGNMENT

1 collection lawsuits and obtaining judgments in those cases by utilizing the U.S.
2 Mail, telephone and internet. KELSTIN regularly collects, directly or indirectly,
3 consumer debts it acquires in default (or has treated the debt as if it were in default
4 at the time of acquisition) via U.S. Mail, telephone, internet, and civil debt
5 collection lawsuits. KELSTIN is a “debt collector” within the meaning of 15 U.S.C. §
6 1692a(6).

7 11. Defendant TERRY A. DUREE, INC. (TAD) is a California corporation
8 operating out of Fairfield, California. TAD may be served by serving its Registered
9 Agent, Terry A. Duree, at 622 Jackson Street, Fairfield CA 94533. TAD is engaged
10 in the business of collection of consumer debts and filing and maintaining civil
11 debt collection lawsuits and obtaining judgments in those cases by utilizing the
12 U.S. Mail, telephone and internet. TAD regularly collects, directly or indirectly,
13 consumer debts alleged to be due to another via U.S. Mail, telephone, internet, and
14 civil debt collection lawsuits. TAD is a “debt collector” within the meaning of 15
15 U.S.C. § 1692a(6).

16 12. Defendant TERRY A. DUREE is an individual who may be served by
17 serving him at his business address at 622 Jackson Street, Fairfield CA 94533.
18 DUREE is a licensed attorney who is engaged in the business of collection of
19 consumer debts and filing and maintaining civil debt collection lawsuits and
20 obtaining judgments in those cases by utilizing the U.S. Mail, telephone and
21 internet. DUREE regularly collects, directly or indirectly, consumer debts alleged
22 to be due to another via U.S. Mail, telephone, internet, and civil debt collection
23 lawsuits. DUREE is a “debt collector” within the meaning of 15 U.S.C. § 1692a(6).

24 13. The true names and capacities, whether individual, corporate, associate
25 or otherwise, of Defendants DOES 1 through 10, inclusive, and each of them, are
26 unknown to Plaintiff at this time, and Plaintiff therefore sues said Defendants by
27 such fictitious names. Plaintiff is informed, believes and thereon alleges, that at all
28 relevant times alleged in this Complaint, Defendants DOES 1 through 10, inclusive,

1 are natural persons, limited liability companies, corporations or business entities
2 of unknown form that have or are doing business in the state of California. Plaintiff
3 will seek leave of the Court to replace the fictitious names of these DOE Defendants
4 with their true names when they are discovered by Plaintiff.

5 14. At all relevant times alleged in this Complaint, Defendants, and each of
6 them, were regularly engaged in the business of collecting consumer debts
7 throughout the state of California, including Contra Costa County and Alameda
8 County, by assisting the other debt collectors in filing and maintaining civil debt
9 collection lawsuits and in obtaining default judgments in those cases by utilizing
10 the U.S. Mail, telephone and internet.

11 15. Plaintiffs are informed, believe and thereon allege, that each and all of
12 the aforementioned Defendants are responsible in some manner, either by act or
13 omission, strict liability, fraud, deceit, fraudulent concealment, negligence,
14 *respondeat superior*, breach of contract or otherwise, for the occurrences herein
15 alleged, and that Plaintiff's injuries, as herein alleged, were proximately caused by
16 the conduct of Defendants.

17 16. Plaintiffs are informed, believe and thereon allege, that at all relevant
18 times alleged in this Complaint, each of the Defendants sued herein was the agent,
19 servant, employer, joint venturer, partner, division, owner, subsidiary, alias,
20 assignee and/or alter-ego of each of the remaining Defendants and was at all times
21 acting within the purpose and scope of such agency, servitude, joint venture,
22 division, ownership, subsidiary, alias, alter-ego, partnership or employment and
23 with the authority, consent, approval and ratification of each remaining Defendant.

24 **FACTUAL ALLEGATIONS**

25 **The Underlying Alleged Debt**

26 17. Plaintiffs are alleged to have incurred a financial obligation, namely
27 Homeowner Association (HOA) dues, assessments, late fees, collection fees and
28 contractual interest in connection with a house they owned in the City of Danville

1 in Contra Costa County, California and Blackhawk Homeowners Association (“the
2 alleged debt”). The alleged debt was incurred primarily for personal, family or
3 household purposes and is therefore a “debt” as that term is defined by 15 U.S.C. §
4 1692a(5).

5 18. As entities seeking fees initially allegedly owed to an HOA, defendants
6 may not collect or attempt to collect fees prohibited by the Davis-Stirling Act.¹ In
7 particular, defendants may not seek collection fees not actually incurred by the
8 HOA.²

9 19. The Collection Service Agreement, Assessment Lien Agreement and
10 Foreclosure Service Agreement (hereinafter “Agreement”) between ASAP and the
11 HOA in effect from as early as 2005 and until about June 2016 provided that ASAP
12 would collect amounts allegedly owed by a homeowner (such as plaintiffs REED
13 and all others similarly situated) to the HOA without charge to the HOA and
14 without the HOA incurring any fees or costs for such collection. Instead, the HOA
15 would charge all collection costs and fees directly to the homeowner.

16 20. Specifically, paragraph 8 of the Agreement provided that the HOA would
17 not be responsible for the payment of fees and costs for services provided by ASAP
18 or by the company which ASAP used to process foreclosure paperwork.

19 21. In addition, paragraph 11.h. provided that the HOA would not incur any
20 fees or costs if ASAP hired a separate company (such as KELSTIN) to collect
21 directly from homeowners such as plaintiffs REED and all others similarly
22 situated, including costs and fees incurred in filing lawsuits. IN addition to
23 collecting the collection fees and costs ASAP tacked on to homeowners’ accounts,
24

25
26 ¹ California Civil Code section 4000 *et seq.*

27 ² *Brown v. Professional Community Management, Inc.* (2005) 127
28 Cal.App.4th 532, 539 (third party vendor’s fees are “illegal” if they exceed
the HOA’s costs).

1 ASAP would be entitled to 50% of the amount collected, *after* the collection fees
2 and costs were paid.

3 22. The California Court of Appeal has found that third-party vendor fees
4 charged to the homeowner but not incurred by the HOA are “illegal” under the
5 Davis-Stirling Act. *Brown v. Professional Community Management, Inc.* (2005)
6 127 Cal.App.4th 532, 539.

7 23. ASAP demanded such “illegal” collection fees from plaintiffs on multiple
8 occasions prior to engaging the services of KELSTIN to file a state court lawsuit
9 against plaintiffs. During the month of August, 2015, ASAP engaged the services of
10 KELSTIN to collect from plaintiffs and if necessary to file a lawsuit against
11 plaintiffs in state court.

12 24. In about January 2016, in response to collection attempts by KELSTIN,
13 plaintiffs notified KELSTIN orally and / or in writing that the amount sought by
14 KELSTIN and ASAP was in dispute.

15 25. Plaintiffs are informed and believe and thereon allege that no defendant
16 ever reported to credit report agencies that the consumer disputed the amount
17 owed on the account.

18 26. Plaintiffs are informed and believe and thereon allege that defendants,
19 and each of them, failed to report to credit report agencies that the consumer
20 disputed the amount owed on the account within a reasonable time of having
21 received the consumer’s dispute, whether oral or in writing.

22 27. On February 1, 2016, KELSTIN filed a lawsuit against these named
23 plaintiffs, seeking, among other things, the unlawful collection fees disallowed
24 under the Davis-Stirling Act. Under the Collection Agreement in place between
25 ASAP and the HOA at that time, ASAP would receive 50% of any proceeds from the
26 lawsuit, after ASAP’s collection fees and costs were paid to ASAP, and a shared
27 percentage of the debt was paid to KELSTIN. Therefore KELSTIN was acting on
28 behalf of itself and on behalf of ASAP as it attempted to collect from plaintiffs.

28. Defendants' multiple acts of misconduct during the litigation are false, deceptive or misleading representations, and unfair or unconscionable means in connection with the collection of debt,³ all of which amount to a continuing course of unlawful conduct which extended over a period of time.⁴

29. As a result of Defendants' abusive debt collection practices, Plaintiff has incurred actual damages including costs and attorney fees in an amount to be determined at trial.⁵

30. Plaintiffs are informed and believe, and thereon allege, that Defendants have collected or attempted to collect unlawful collection fees and costs on more than 40 persons in the State of California in the one year preceding the filing of this Complaint. Therefore, Plaintiffs may seek leave to amend this Complaint to add class allegations at a later date.

CLAIMS

FAIR DEBT COLLECTION PRACTICES ACT

31. Plaintiffs bring the first claim for relief against Defendants KELSTIN, ASAP, TAD and DUREE under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*

32. Plaintiff incorporates all paragraphs in this Complaint as though fully set forth herein.

33. Plaintiff RICHARD REED is a "consumer" as that term is defined by the FDCPA, 15 U.S.C. § 1692a(3).

³ 15 U.S.C. § 1692e, *McCollough v. Johnson, Rodenburg & Lauinger* (9th Cir. 2011) 637 F. 3d 939, 950-951, quoting *Heintz v. Jenkins* (1995) 514 U.S. 291, 294).

⁴ *Komarova v. National Credit Acceptance, Inc.* (2009) 175 Cal. App. 4th 324, 344.

⁵ *Owens v. Howe* (N.D. Ind. 2005) 365 F. Supp. 2d 942, 948 (the attorney fees and costs incurred defending a state court action are awardable as actual damages under 15 U.S.C. § 1692k(a)(1); (*See Lowe v. Elite Recovery Solutions, L.P.* (E.D. Cal. Feb. 4, 2008) 2008 WL 324777.))

1 34. Plaintiff DONNA REED is a “consumer” as that term is defined by the
2 FDCPA, 15 U.S.C. § 1692a(3).

3 35. Defendant ASAP is a “debt collector” as that term is defined by the
4 FDCPA, 15 U.S.C. § 1692a(6).

5 36. Defendant KELSTIN is a “debt collector” as that term is defined by the
6 FDCPA, 15 U.S.C. § 1692a(6).

7 37. Defendant TAD is a “debt collector” as that term is defined by the
8 FDCPA, 15 U.S.C. § 1692a(6).

9 38. Defendant DUREE is a “debt collector” as that term is defined by the
10 FDCPA, 15 U.S.C. § 1692a(6).

11 39. The financial obligation sought to be collected from Plaintiffs is a “debt”
12 as that term is defined by the FDCPA, 15 U.S.C. § 1692a(5).⁶

13 40. Defendants violated the FDCPA, 15 U.S.C. §§ 1692d, 1692e, 1692e(2),
14 1692e(10) and 1692f by making false and misleading representations, and engaging
15 in unfair and abusive practices. Defendants’ violations include, but are not limited
16 to:

17 a. misrepresenting the character, amount or legal status of the alleged
18 debt, in violation of 15 U.S.C. § 1692e(2)(A);

19 b. communicating or threatening to communicate credit information
20 known to be false, in violation of § 1692e(8);

21 c. making and using false, deceptive, and misleading representations in an
22 attempt to collect the alleged debt, in violation of 15 U.S.C. §§ 1692e and
23 1692e(10);

24 41. Defendants’ acts as described above were done intentionally with the
25 purpose of coercing Plaintiff to pay the alleged debt.
26
27

28 ⁶ *Thies v. Law Offices of William A. Wyman* (SD Cal 1997) 969 F.Supp. 604 .

1 42. As a result of Defendants' violations of the FDCPA, Plaintiff is entitled to
2 an award of actual damages, statutory damages, costs and reasonable attorneys
3 fees, pursuant to 15 U.S.C. § 1692k.

4 43. Courts have found that by their very nature, abusive, deceptive or unfair
5 debt collection practices are those kinds of actions which may be expected to cause
6 emotional distress and, therefore, the availability of damages for such distress is of
7 paramount importance.⁷

8 44. Pursuant to California Civil Code § 3345, Plaintiff RICHARD REED is
9 entitled to an award of up to three times greater than the amount authorized by 15
10 U.S.C. § 1692k, because at all times relevant hereto, plaintiff RICHARD REED was
11 65 years of age or older, and disabled, and actually suffered financial harm in the
12 form of loss of property for personal or family care and maintenance, and assets
13 essential to the health and welfare of plaintiff.

14 UNFAIR BUSINESS PRACTICES

15 45. Plaintiffs bring the second claim for relief against Defendants ASAP,
16 KELSTIN, TAD and DUREE for their unlawful business acts and/or practices
17 pursuant to California Business and Professions Code § 17200 et seq., which
18 prohibits all unlawful business acts and/or practices.

19 46. Plaintiff incorporates all paragraphs in this Complaint as though fully set
20 forth herein.

21 47. The unlawful acts and practices of Defendants alleged above constitute
22 unlawful business acts and/or practices within the meaning of California Business
23 and Professions Code § 17200 et seq.

24 48. By engaging in the above-described acts and practices, Defendants have
25 committed one or more acts of unfair competition within the meaning of California
26 Business and Professions Code § 17200 et seq.

27 ⁷ *Deeters v. Phelan Hallinan & Schmieg, L.L.P.*, 2013 WL 6524625 (W.D.
28 Pa. Dec. 12, 2013).

51. As a direct and proximate result of Defendants' unlawful conduct alleged herein, Plaintiffs have sustained actual pecuniary loss in that they incurred costs of suit and attorney fees for representation in the state court case and the filing of this lawsuit. Plaintiffs are direct victims of Defendants' unlawful conduct, as alleged herein, have suffered injuries in fact and have lost money or property as a result of Defendants' violations of the FDCPA and Defendants' unfair competition.

Plaintiffs request that this Court:

- 28

1 e) Award Plaintiff RICHARD REED an award of up to three times greater
2 than the amount authorized by 15 U.S.C. § 1692k, pursuant to California Civil Code
3 § 3345;

4 f) Award Plaintiffs the costs of this action and reasonable attorneys fees
5 pursuant to 15 U.S.C. § 1692k(a)(3) and Cal. Civil Code § 1021.5, (*see* 15 U.S.C. §
6 1692k(a)(3)); and

7 g) Award Plaintiffs such other and further relief as may be just and proper.

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9 DATED: December 5, 2016

/s/ James A. Michel
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RICHARD REED and
DONNA REED

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16 DEMAND FOR JURY TRIAL

17 PLEASE TAKE NOTICE that Plaintiffs RICHARD REED and DONNA REED
18 hereby demand a trial by jury of all triable issues of fact in the above-captioned
19 case.

20
21 DATED: December 5, 2016

/s/ James A. Michel
JAMES A. MICHEL